



FH  
[REDACTED]

**STATE OF WISCONSIN  
Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MQB/168844

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**PRELIMINARY RECITALS**

Pursuant to a petition filed September 21, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Milwaukee Enrollment Services in regard to Medical Assistance (MA), a telephonic hearing was held on October 06, 2015, at Milwaukee, Wisconsin.

The issue for determination is whether the agency correctly closed petitioner's MA - Special Low Income Medicare Beneficiary (SLMB) due to excess income effective October 1, 2015.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: Pang Thao Xiong, IM Spec. Adv.  
Milwaukee Enrollment Services  
1220 W Vliet St, Room 106  
Milwaukee, WI 53205

**ADMINISTRATIVE LAW JUDGE:**

Kelly Cochrane  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. The petitioner is in an MA group of one person.
3. The petitioner's household monthly gross income was \$1207 for October 2015.

4. On September 8, 2015, the agency issued written notice to the petitioner advising her that she was not eligible for SLMB effective October 1, 2015. The basis for discontinuance was excess income.

### DISCUSSION

Qualified Medicare Beneficiary (QMB), Special Low Income Medicare Beneficiary (SLMB), and SLMB Plus are MA programs which provide assistance with Medicare Part B premiums for persons whose incomes are over the regular Medical Assistance limits. All three Medicare Savings Programs pay the entire Part B premium. See the [\*Medicaid Eligibility Handbook\* \(MEH\)](#), §32.1.1 for a full description of the programs. It is available online at <http://www.emhandbooks.wisconsin.gov/meh-ebd/meh.htm>.

The Medicare Savings Programs have progressively higher income limits and use the same rules for determining financial eligibility as is done for Medicaid. The SLMB income limit – the program at issue here – is at least 100% of the FPL, but less than 120%, which is \$1177. *MEH*, §§32.3.2 and 39.5. The agency is directed at *MEH*, §32.3.2 to calculate SLMB net income in the same way as QMB is calculated which is:

\$ Earned income (See [15.5 Earned Income](#))  
 - \$65 and ½ earned income deduction ([15.7.5 \\$65 and ½ Earned Income Deduction](#))  
 + Unearned income (social security income, etc.) ([15.4 Unearned Income](#))  
 - Special exempt income ([15.7.2 Special Exempt Income](#))  
 - \$20 standard deduction  
 = Net income used to determine QMB eligibility

When counting social security income, use gross social security income. Gross social security income:

1. Of a self-payer = the social security check amount + Medicare premiums he or she has paid.
2. Of someone for whom the State is paying the premiums = the social security check amount.

*MEH*, §32.2.3.

The agency presented the budget to show that the agency took her unearned income of \$1206.90 (unclear why the 10 cent difference occurred; see Finding of Fact #3; however the difference does not affect the outcome here) and subtracted the only deduction she was eligible for – the \$20 standard deduction – to arrive at her net income of \$1186.90. Because the petitioner's income exceeds the SLMB amount, the agency found her ineligible for Medicare Premium Assistance.

Petitioner provided no evidence to show that the computations were incorrect. However, she was understandably confused with the termination given the agency's previous budgeting errors which opened her for SLMB in August. Petitioner hung up on the hearing before this administrative law judge closed the hearing, and therefore no other evidence was adduced from the petitioner.

Having no evidence to the contrary, I must uphold the agency's decision. If petitioner's finances change, she can always reapply for the Medicare Savings Programs.

I add, assuming petitioner finds this decision unfair, that it is the long-standing position of the Division of Hearings & Appeals that the Division's hearing examiners lack the authority to render a decision on equitable arguments. See, [\*Wisconsin Socialist Workers 1976 Campaign Committee v. McCann\*](#), 433

F.Supp. 540, 545 (E.D. Wis.1977). This office must limit its review to the law as set forth in statutes, federal regulations, and administrative code provisions.

### **CONCLUSIONS OF LAW**

The agency correctly closed petitioner's MA - SLMB due to excess income.

**THEREFORE, it is**

**ORDERED**

The petition for review herein is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 21st day of October, 2015

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\sKelly Cochrane  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on October 21, 2015.

Milwaukee Enrollment Services  
Division of Health Care Access and Accountability